

Office of the Deputy Mayor for Planning and Economic Development Revenue Bond Program: Policies and Procedures

Standard Operations Manual

30 100 Description

The District of Columbia Revenue Bond Program offers below market interest rate loans to help lower the cost of funds available for capital projects sponsored by private businesses and institutions. The program provides taxable and tax-exempt bond financing of projects in a broad array of areas, including of healthcare, hospitality, recreation, manufacturing, housing, transit and utilities, elementary, secondary, technical, and higher education, student loan programs, and industrial, commercial and economic development.

Program funds are generated through the issuance and sale of District of Columbia municipal securities, the proceeds of which may be used to finance, refinance and reimburse costs of acquiring, constructing, restoring, rehabilitating, expanding, improving, equipping and furnishing real property and related and subordinate facilities. The government incurs no financial obligation in connection with bonds issued on behalf of non-governmental entities. Such loans are repayable solely from the pledged revenues, income and assets of the private borrowers who also must indemnify the District against all pecuniary and legal liability on the bonds and the financing instruments.

30 100.20 Policy

The principal function of the Program is to help stimulate private and public infrastructure development and to expand employment and commercial activity by increasing the availability and lowering the cost of capital financing. Working in cooperation with private sector institutions and public agencies and instrumentalities, the Program staff assists in developing financing products and services, structuring project loans and negotiating public benefit agreements that help implement and further the business development, job training, employment, and other economic development policies and objectives of the District government.

30 100.30 Authority

Federal and local statutes governing the Program include Section 103 of the Internal Revenue Code of 1986, as amended; and Section 490 of the District of Columbia Home Rule Act, (P.L. 93-189; 87 Sts. 774), as amended. Program regulations are found under Title 10 Chapter 50 of the District of Columbia Municipal Regulations.

30 100.40 Responsibility

The Revenue Bond Program is an operating component of the Office of the Deputy Mayor for Planning and Economic Development. Ministerial and discretionary authority over the day-to-day operation of the program is exercised by the Director. This authority is exercised under a delegation of the Mayor's authority under Mayor's Order 2000-1, dated January 7, 2000 and by a subdelegation, dated October 4, 2000, from the Deputy Mayor for Planning and Economic Development to the Director of the Revenue Bond-Enterprise Zone Program.

Professional staff consists of the Director of the Revenue Bond-Enterprise Zone Program, Senior Manager, three Project Managers, 1 Program Analyst, and a Program Specialist. Persons, other than the Mayor, who have express authority to negotiate and execute revenue bond financing instruments, public benefit agreements, and related documents on behalf of the District include:

Neil O. Albert
Deputy Mayor for Planning and Economic Development

William A. Liggins
Director, Revenue Bond-Enterprise Zone Program

30 200 Procedures

PRELIMINARY APPLICATION REVIEW Persons seeking financing through the Program generally participate in a pre-application conference devoted to addressing project purposes and goals, the application review process, and Program guidelines. A proper filing involves the delivery to the Program of one executed original and multiple copies of the Application for Revenue Bond Financing, supporting documents, and a cashier's check or money order in the amount of the application fee. Program staff makes a threshold eligibility determination and review the application for completeness. Generally, the preliminary application review is completed within three business days after the application filing date. Program applications may be filed by prospective borrowers at any time, and are processed continuously. Ineligible applicants are declined, and incomplete applications are rejected or returned to the applicant for review or resubmission.

The Internal Revenue Code imposes limitations on the types of businesses and on the amount of tax-exempt bonds that may be issued on behalf of private for-profit businesses within various areas of the District. The IRS imposes no limitation on the amount of tax-exempt bonds that can be issued on behalf of non-profit 501(c)(3) institutions. Entities that may obtain tax-exempt financing include manufacturers, private businesses located within the "District of Columbia Enterprise Zone"^{1[1]}, health care providers, utilities, colleges and universities, non-profit cultural, civic, professional, and educational associations and other qualified non-profit organizations.

^{1[1]} This refers to the primary Enterprise Zone, which consists of census tracts in which 20% of the households had 1990 incomes at or below the poverty level.

Each applicant for revenue bond financing must, among other things, meet credit-worthiness standards established by bond purchasers; own or have legal control of the proposed development site; and identify specific public purpose benefits associated with the proposed project. Before public approval may be granted, each applicant must execute public benefit agreements governing the employment of District residents (“First Source Employment Agreement”) and the engagement of businesses certified by the Department of Local Business Development (“Certified Business Utilization Agreement” *formerly referred to as the Memorandum of Understanding*). Applicants also must demonstrate to the satisfaction of Program staff, evidence of good corporate citizenship, (for example, by having established assistance programs, or by agreeing to deploy human and programmatic resources in a manner that helps strengthen the institutional capacity of public and private social service agencies that serve District residents.)

LEGAL AND REGULATORY REVIEWS Copies of each application and supporting materials are transmitted for review and approval to the Directors of executive agencies that exercise statutory authority over any aspects of the proposed undertaking. These cabinet level departments and offices include, without limitation, the Departments of Consumer and Regulatory Affairs, Employment Services, and Local Business Development, and the Offices of Tax and Revenue, and Planning. Outstanding regulatory issues, if any, are resolved with the assistance of Program staff, which serves as the applicant’s primary point of contact with executive agencies. Effective January 2003, notices of application filings are mailed to Advisory Neighborhood Commissions and Neighborhood Services Coordinators in the affected area.

The Program lacks authority to intervene in determining legal and regulatory issues under the jurisdiction of independent agencies, such as the Zoning Commission, the National Capital Planning Commission, the Redevelopment Land Agency, the District of Columbia Public Schools, and other government instrumentalities not subject to the Mayor’s Executive authority. Thus, review of compliance with local law and regulations is undertaken by the agencies, offices and departments that have been delegated jurisdiction over matters that may arise in connection with the planned project, e.g., zoning matters are reviewed by the Office of Planning, or, they are resolved by the Zoning Commission; tax compliance is handled by the Office of Tax and Revenue; health issues are examined and determined by the Department of Health or the State Health Planning and Developmental Disabilities Administration, etc..

To accomplish this efficiently, team members receive and review copies of the application concurrently. Processing of the application and the structuring of financing arrangements will not proceed unless the Program Director receives the written approval of each agency, department or office that has statutory responsibility for making final determinations on any disputed matter within its jurisdiction.

Applications concurrently are transmitted to the Office of the Attorney General (*formerly the Office of Corporation Counsel*) and to the District’s bond counsel, who prepares written preliminary eligibility determinations regarding the applicant and the proposed project pursuant to District law, U.S. Treasury regulations, voluntary industry rules, and the tax-exempt bond provisions of the Internal Revenue Code. Bond counsel receives a formal written assignment from program staff. In the event that the applicant proposes an atypical financing or development plan, or if a special public fund is pledge to bond repayment, the application

package is transmitted for review by the District's Financial Advisors. Written agency recommendations of approval/disapproval and legal sufficiency determinations, are to be transmitted to the Program not more than fifteen business days from the date of the request.

EXECUTIVE RECOMMENDATION Information contained in the application package, along with any substantive and anecdotal findings obtained from the applicant's representatives, and the analyses and recommendations of the District agencies and bond professionals are synthesized in the form of a Fact Sheet that serves as the primary reference document for review by Executive and Legislative officials. The document is divided into sections that briefly describe the applicant, proposed financing, financing plan, legal and regulatory review, and public purpose benefits.

Following resolution of outstanding legal and regulatory matters, if any, Program staff prepares and transmits through the Office of the Deputy Mayor a formal endorsement of the project and a request for the Mayor's approval of the bond issuance and sale. The request includes a letter from the Mayor to the Chairman of the Council, requesting that the Chairman introduce a Project Approval Resolution on behalf of the Mayor. The letter is accompanied by a draft Resolution, the Fact Sheet, copies of the legal sufficiency determinations of counsel, and each agency's memorandum of approval.

COUNCIL APPROVAL Upon approval by the Mayor, the transmittal package is delivered to the Office of the Chairman of the Council of the District of Columbia (Council) where it is logged-in officially and later referred by the Chairman to the Committee on Finance and Revenue, whose office arranges publication of a hearing notice in the District of Columbia Register. Program staff arranges with the Committee staff a tentative date for conduct of a public hearing consistent with the respective requirements of federal regulations, District law, and the Rules of Organization and Procedure of the Council.

Notices of the public hearing are published in a newspaper of general circulation and in the Register not less than 15 days in advance of the proposed hearing date. Program staff is responsible for preparing and delivering testimony on behalf of the Executive. Representatives of the borrower present testimony followed by public comment and questions and statements of members of the Council Committee. If the Committee approves the project, it will prepare a Committee Report and schedule a date for a vote by the Council as its next legislative session. In the event of exigent circumstance in the market or an impending Council recess, Program or Committee staff may seek approval by Emergency Resolution.

FINANCING DOCUMENTATION Since 1994, the Program has used "model" financing and closing documents developed in cooperation with Corporation Counsel and bond counsel. These models set forth the standard provisions of concern to the District, such as the city's indemnification from legal, financial liability, environmental matters, warranties of borrowers, District representations, and the filing of notices. The use of model provisions also helps expedite document review by members of the District team and others that are accustomed to the District's use of standard language.

Staff participation in structuring specific terms of a financing is limited intentionally due to the fact that the District bears no financial obligation for repayment of loan, the bonds or the project.

With the exception of requiring direct payment to its bond professionals and the payment of the Program Fee (see below), specific terms and conditions of the financing are negotiated by representatives of the borrower and the bond purchasers with technical assistance provided by legal and finance specialists and Program staff.

District involvement typically centers on provisions of the Trust Indenture and Loan Agreement, which may affect the integrity of the District generally, and the Program specifically, e.g., the viability of District issuance processes and procedures; its on-going monitoring and reporting responsibilities its indemnification from actions or omissions by parties to, or participants involved with the issuance, sale and delivery of the bonds; and the continuing tax-exemption of interest on the bonds.

CLOSING DOCUMENTATION The bond closing involves the preparation and execution of numerous documents and certificates evidencing the terms and conditions of the borrowing, the financing and the closing along with the respective consents of the District, the borrower, the bond purchasers, insurers, and other participants in the transaction. Responsibility for preparation of documents is distributed among the attorneys representing the various parties. The District's bond counsel assumes responsibility for the preparation and the legal review of documents to be executed by the District. That responsibility is undertaken in conjunction with the Office of the Corporation Counsel, which has jurisdiction over legal affairs of the District. The Certificates, which like the model bond provisions generally are of standard form, are delivered to the Revenue Bond Program for execution by the Director (the Mayor's Authorized Subdelegate), and, as appropriate, the Deputy Mayor for Planning and Economic Development, the Secretary of the District of Columbia, the Secretary to the Council, and the Mayor.

The closing takes place contemporaneously upon delivery and exchange of all executed documents and certificates and immediate transfer of bond proceeds to the appropriate Trustee accounts held in the name of the borrower. A complete record of the transaction is compiled and prepared for binding by the District's bond counsel who later is responsible for distributing the bound documents to the requesting parties. Binders for the District generally are prepared for and delivered to the Revenue Bond Program, the Office of the Corporation Counsel and the Secretary to the Council.

PROGRAM MONITORING AND REPORTING Revenue Bond Program staff must also make certain periodic filings with the Internal Revenue Service regarding the aggregate amount of "private activity bonds" issued during the prior calendar year, and must allocate among all authorized District issuers any unused authority which may be carried forward for the three ensuing calendar years. Additionally, to the extent that earnings on the investment of bond proceeds exceed specific arbitrage limits, the excess amounts must be rebated to the U.S. Treasury.

Rules and procedures of the Securities and Exchange Commission and the Municipal Securities Rulemaking Board require that persons obligated to make payments on the revenue bond indebtedness make periodic disclosures to the market of information that has or may have a material affect on the financial condition of the borrower, or that may affect the underlying value of the securities. The District includes in its loan agreements provisions that contractually

charge the obligor or a third party with responsibility to perform the analyses, prepare the reports and make the payments, as may be required under such rules and procedures.

During and following the application procedure, Revenue Bond Program staff updates the information databases with information needed for annual audit purposes. This document is currently a series of Excel spreadsheets. A report on the aggregate principal amount of outstanding revenue bonds is filed annually with the DC Comptroller.